

¹ The record contains a second Office decision dated and finalized July 7, 2005, regarding a schedule award which is in an interlocutory posture before the Office. Appellant claimed a schedule award on August 22, 2003. A June 15, 2004 decision denied the schedule award claim. Following an April 20, 2005 oral hearing, by decision dated and finalized July 7, 2005, an Office hearing representative found that the schedule award issue was not in posture for a decision and remanded the case for further development. As there is no final issue of record on the schedule award issue following the July 7, 2005 remand, the schedule award issue is not in posture for a decision on the present appeal. 20 C.F.R. §§ 501.2(c) and 501(d)(3).

FACTUAL HISTORY

The Office accepted that on or before January 1, 2002 appellant, then a 41-year-old modified distribution clerk, sustained bilateral carpal and cubital tunnel syndromes. Appellant was on permanent light duty as of December 15, 2001.

In a June 14, 2002 report, Dr. Alexander D. Mih, an attending Board-certified orthopedic surgeon, stated that nerve conduction velocity studies demonstrated significant nerve compression at the elbow and forearm of the left upper extremity. An electromyography study showed left cubital tunnel syndrome.

On November 9, 2002 an occupational health contractor referred appellant to an emergency room for evaluation of headaches and neck pain. She was evaluated on November 9, 2002 by Dr. R. Kumar Swami, a Board-certified neurologist. He noted appellant's account of lifting at work that day with a marked increase in symptoms, as well as her history of overuse pathologies of the upper extremities. Dr. Swami administered Toradol and prescribed Motrin and Flexeril. He diagnosed a cervical strain and kept appellant off work for two days.

In a November 12, 2002 report, Dr. Mih diagnosed left carpal tunnel and cubital tunnel syndromes, right-sided discomfort and severe neck pain.

In a November 20, 2002 report, Dr. John W. Timothy, an attending Board-certified physiatrist, provided restrictions against using the right arm or reaching above chest level. In a November 21, 2002 report, he noted that appellant experienced a marked aggravation of her symptoms approximately two weeks prior. Dr. Timothy noted that she attributed her right arm symptoms to compensating for her left arm difficulties. He listed an impression of left cubital tunnel syndrome and developing right upper extremity symptoms, all attributable to "specific activities" of appellant's work.

In a January 3, 2003 report, Dr. Mih advised surgery to address appellant's bilateral carpal and cubital tunnel syndromes. He provided work restrictions against reaching above shoulder level and limited use of both hands. Appellant underwent a left median nerve release on January 22, 2003 and a left cubital tunnel release on April 9, 2003. She received appropriate compensation from January 22 to May 27, 2003. Appellant returned to light duty on May 28, 2003 with permanent restrictions.² Dr. Mih submitted periodic treatment notes through May 6, 2004 reiterating his prior restrictions.

On March 3, 2003 appellant filed a claim for wage-loss compensation for the period November 9 to December 6, 2002. In a May 19, 2004 letter, the Office advised her of the additional evidence needed to establish her claim for wage-loss compensation, including a rationalized statement from an attending physician explaining how and why work factors would cause the claimed period of disability. The Office afforded appellant 30 days in which to submit such evidence.

² On June 2, 2003 appellant filed a notice alleging a recurrence of disability commencing May 31, 2003. There is no final decision of record regarding this claim.

In a July 20, 2004 letter, the employing establishment controverted appellant's claim for wage-loss compensation for the period November 9 to December 6, 2002. It asserted that she received continuation of pay for the same period under a separate claim which the Office later denied.³

By decision dated July 20, 2004, the Office denied appellant's claim for a recurrence of disability commencing November 9, 2002 on the grounds that the medical evidence did not support the claimed period of disability.

Appellant requested an oral hearing which was held on April 20, 2005. At the hearing, she explained that she originally filed a traumatic injury claim for a November 9, 2002 injury, which was denied after she had already received continuation of pay from November 9 to December 12, 2002. Appellant was then instructed to file an occupational disease claim for that period. She asserted that she was entitled to compensation for the period November 9, 2002 to January 21, 2003 as the employing establishment had no light-duty work within her restrictions during that time. Appellant submitted additional reports from Dr. Mih.⁴

In a November 12, 2002 slip, Dr. Mih held appellant off work that day "due to being on pain medications." In a March 22, 2005 letter, he diagnosed cervical radiculopathy based on a nerve conduction velocity study. Dr. Mih released appellant to "resume her previous job status wearing the splint at work" and avoiding repetitive activities with her hands and arms. In an April 26, 2005 slip, he stated that she had been unable to case mail since November 2002. In a May 18, 2005 slip, Dr. Mih stated that appellant "was unable to perform her job duties due to bilateral hand and arm abnormalities from November 18 to December 6, 2002."

By decision dated and finalized July 7, 2005, the Office hearing representative modified the July 20, 2004 decision, finding that appellant established entitlement to compensation for the period November 20, 2002 to January 21, 2003. The hearing representative found that Dr. Timothy's November 20, 2002 reports established that she required light-duty work which the employing establishment did not provide. Also, the employing establishment "did not contest [her] testimony" and the record did not contain "any evidence of a light-duty job offer." The hearing representative found that appellant did not establish disability for work from November 9 to 19, 2002, as Dr. Mih's November 9 and 12, 2002 notes did not provide a diagnosis or find her disabled for work.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of his or her claim by the weight of the

³ Claim No. 09-2027081. A November 27, 2002 employing establishment form indicates that appellant received continuation of pay from November 18 to 27, 2002 for a traumatic injury.

⁴ Appellant also submitted evidence previously of record and unsigned fragments of several reports. Appellant also submitted psychiatric reports dated from March 2003 to October 2004. However, there is no claim of record for an emotional condition.

evidence.⁵ Under the Act, the term “disability” is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.⁶ For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁷ Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁸ The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁹ The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify her disability and entitlement to compensation.¹⁰

ANALYSIS

The Office accepted that appellant established that she was disabled for work from November 20, 2002 to January 21, 2003, due to the accepted bilateral cubital and carpal tunnel syndromes. She has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her claimed total disability from November 9 to 19, 2002 and the accepted upper extremity conditions.¹¹

In support of her claim, appellant submitted a November 9, 2002 report from Dr. Swami, an attending Board-certified neurologist. He held her off work for two days due to a cervical strain. However, the Office has not accepted a neck injury or condition in this case. Appellant also submitted a November 12, 2002 report from Dr. Mih, an attending Board-certified orthopedic surgeon, diagnosing left carpal tunnel and cubital tunnel syndromes, right-sided discomfort and severe neck pain. However, he did not state that she was disabled for work. Similarly, Dr. Timothy, an attending Board-certified physiatrist, provided November 20 and 21, 2002 reports stating an impression of left cubital tunnel syndrome and developing right upper extremity symptoms, but did not find appellant disabled for work.

The reports of appellant’s physicians do not provide a rationalized medical opinion finding her disabled for work, for any portion of the period of November 9 to 19, 2002 due to the accepted bilateral carpal and cubital tunnel syndromes. Therefore, the medical evidence

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *See Prince E. Wallace*, 52 ECAB 357 (2001).

⁷ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ *Manuel Garcia*, 37 ECAB 767 (1986).

¹⁰ *Amelia S. Jefferson*, 57 ECAB __ 04-568 (issued October 26, 2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹¹ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

submitted in support of her claim for wage-loss compensation for that period is insufficient to meet appellant's burden of proof.¹² The Board notes that the Office advised her, by May 19, 2004 letter, of the necessity of submitting rationalized medical evidence explaining how and why the accepted conditions would cause the claimed period of disability. However, appellant did not submit such evidence.

CONCLUSION

The Board finds that appellant has not established that she was disabled for work and entitled to wage-loss compensation for the period November 9 to 19, 2002.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated and finalized July 7, 2005, adjudicating appellant's entitlement to wage-loss compensation, is affirmed.

Issued: January 13, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹² *Id.*